

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MALIBU TEXTILES, INC.,

Plaintiff,

- against -

CAROL ANDERSON, INC. et al.,

Defendants.

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DOC #: <u>7/26/07</u>
DATE FILED: <u>7/26/07</u>

SCHEDULING ORDER

07 Civ. 4780 (SAS)

Conference Date: July 25, 2007

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) on July 2, 2007 (the "Order"); and

WHEREAS, the Order requires that the parties jointly prepare and sign a proposed scheduling order subject to court approval;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order:

(1) the date of the conference and the appearances for the parties;

Date of the conference: July 25, 2007

Appearances:

For the Plaintiff Malibu Textiles, Inc.:

Nancy E. Wolff and Matthew A. Kaplan of Cowan, DeBaets, Abrahams & Sheppard LLP

For Defendants Carol Anderson, Inc. & CABI, LLC:

Harlan M. Lazarus of Lazarus & Lazarus, P.C.

(2) a concise statement of the issues as they then appear;

Does the plaintiff have protectable copyrights?

If yes, did each defendant infringe plaintiff's copyrighted works?

If yes, were such acts willful, contributory or innocent?

Whether defendants have any legitimate defenses to infringement?

(3) a schedule including:

(a) the names of persons to be deposed and a schedule of planned depositions;

The parties currently anticipate that depositions will be taken of at least the following individuals and such other witnesses as they may deem appropriate as discovery progresses:

Currently Anticipated Depositions by Plaintiff:

30(b)(6) witness

Other business witnesses to be determined as discovery progresses

Currently Anticipated Depositions by Defendants:

30(b)(6) witness

Other business witnesses to be determined as discovery progresses

Depositions will be completed by November 16, 2007.

(b) a schedule for the production of documents;

Initial Disclosures by August 3, 2007
Initial document requests may be served on or before August 24, 2007.

Responsive Documents will be produced by October 5, 2007.

(c) dates by which (i) each expert's reports will be supplied to the adverse side and (ii) each expert's deposition will be completed;

(i) Expert reports will be exchanged by December 14, 2007.

(ii) Expert depositions will be completed by January 11, 2008.

(d) time when discovery is to be completed;

All discovery, including expert discovery, will be completed by January 31, 2008.

(e) the date by which plaintiff will supply its pre-trial order matters to defendant;

Plaintiff will supply its pre-trial order matters to defendant by February 15, 2008 unless summary judgment motions have been filed on or before said date.

(f) the date by which the parties will submit a pre-trial order in a form conforming with the Court's instructions together with trial briefs and either (1) proposed findings of fact and conclusions of law for a non-jury trial, or (2) proposed voir dire questions and proposed jury instructions, for a jury trial; and

The parties will submit a pre-trial order together with trial briefs and proposed voir dire questions and proposed jury instructions by February 29, 2008 unless summary judgment motions are pending.

(g) a space for the date for a final pre-trial conference pursuant to Fed. R. Civ. P. 16(d), to be filled in by the Court at the conference.

Dec. 19 at 4:30 pm

(4) a statement of any limitations to be placed on discovery, including any protective or confidentiality orders;

Except for good cause shown, no additional parties may be joined, no new causes of action asserted, and no additional defenses may be asserted after September 21, 2007.

Parties will discuss entering into a Stipulated Protective Order regarding business and other financial information.

(5) a statement of those discovery issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement;

N/A

(6) anticipated fields of expert testimony, if any;

At this time the parties anticipate that, subject to the requirements of FRE 702, the following areas may lend themselves to possible expert opinion:

- (a) Testimony regarding the creation and comparison of lace patterns;
- (b) the percentage of defendants' profits attributable to the alleged copyright infringement; and
- (c) measure of statutory damages as provided under the Copyright Act.

(7) anticipated length of trial and whether to court or jury:

Plaintiff has requested a jury trial and the parties anticipate the trial will take about 3 days.

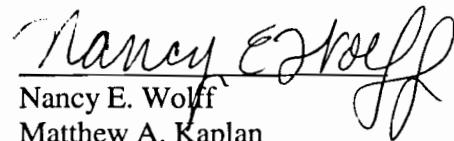
(8) This Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference of when justice so requires.

(9) names, addresses, phone numbers and signatures of counsel:

Dated: New York, New York
July 25, 2007

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SHEPPARD LLP

By:



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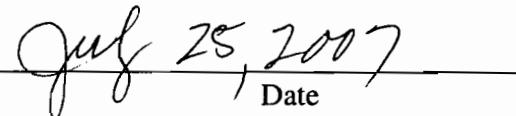
LAZARUS & LAZARUS, P.C.

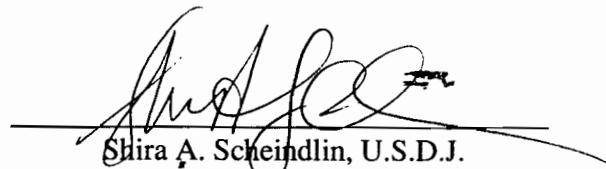
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Attorneys for Defendants

SO ORDERED:



Date

Shira A. Scheindlin, U.S.D.J.